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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,  
  
                    Plaintiff,  
  
          v.  
  
CRUZ TORRES-GONZALEZ,  
  
                    Defendant.

CASE NO. 12-CR-4076-GPC  
  
ORDER DENYING DEFENDANT’S  
MOTION FOR NEW TRIAL

**I. OVERVIEW**

On March 28, 2013, following a three-day jury trial, Defendant Cruz Torres-Gonzalez (“Defendant” or “Torres-Gonzalez”) was convicted of being a Deported Alien Found in the United States under 18 U.S.C. § 1326, and making a False Statement to a Federal Agency under 18 U.S.C. § 1001. On July 12, 2013, Torres-Gonzalez filed a motion for new trial. The Government filed its response and opposition on August 9, 2013. The motion for new trial raised the following challenges:

(1) insufficiency of the evidence to sustain a § 1326(a) conviction; (2) insufficiency of evidence to establish the “materiality” requirement under § 1001; and (3) the erroneous admission of the testimony of Susan Homewood, a handwriting expert.

On August 16, 2013, the Court held a hearing on Defendant’s motion for new trial. Following argument by counsel, the Court orally denied the motion for new trial as to all of

1 the raised grounds except the sufficiency of evidence issue on the “materiality” requirement of  
2 § 1001. The Court took this issue under submission. Following careful review and  
3 consideration of the parties’ arguments and record in this case, the Court finds that there is  
4 sufficient evidence to support the “materiality” determination and the 18 U.S.C. § 1001  
5 conviction. As such, the Court DENIES Defendant’s motion for new trial.

## 6 **II. FACTUAL BACKGROUND**

7 On September 8, 2012, Torres-Gonzalez was arrested by Border Patrol Agent Philip Kader  
8 in an area near the Tecate Point of Entry. Following his arrest, Torres-Gonzalez admitted to  
9 being a Mexican citizen without authorization to be in the United States. Agent Kader turned  
10 over Torres-Gonzalez to Border Patrol Agent Thomas McCormick for processing. Defendant  
11 told McCormick that his name was “Juan Ruiz-Gonzalez”. Agent McCormick entered the  
12 name “Juan Ruiz Gonzalez” into the database. Thereafter, an immigration form was provided  
13 to Defendant who signed his name as “Juan Ruiz Gonzalez” and requested a voluntary return  
14 to Mexico.

15 After running Defendant’s fingerprints, McCormick determined that Defendant’s true  
16 name was Cruz Torres-Gonzalez and that he had been previously deported. Based upon this  
17 information, Torres-Gonzalez was not allowed to voluntarily return and this prosecution  
18 followed.

## 18 **III. DISCUSSION**

19 The case presents the question whether a false statement to a Border Patrol Agent that has  
20 almost no chance of resulting in the voluntary return of a defendant can nonetheless be  
21 “material” for purposes of § 1001. 18 U.S.C. § 1001 provides in pertinent part:

22 (a) ... whoever, in any matter within the jurisdiction of the executive, legislative, or  
23 judicial branch of the Government of the United States, knowingly and willfully--

24 (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

25 (2) makes any materially false, fictitious, or fraudulent statement or representation; or

26 (3) makes or uses any false writing or document knowing the same to contain any  
27 materially false, fictitious, or fraudulent statement or entry;

28 shall be fined under this title, imprisoned not more than 5 years or, if the offense

1 involves international or domestic terrorism (as defined in section 2331), imprisoned  
2 not more than 8 years, or both.

3 By its terms, 18 U.S.C. § 1001 covers “any” false statement. Torres-Gonzalez argues that  
4 even if he provided a false name, the Government has failed to prove the “materiality” of the  
5 statement. Torres-Gonzalez argues it is illogical to suggest he thought providing a false name  
6 would prevent detection of criminal record where he knew aliens are fingerprinted in all cases  
7 and agents do not rely on the name given. Torres-Gonzalez contends that the false statement  
8 was incapable of influencing the Border Patrol because agents do not rely on the name given  
9 and instead rely on the fingerprint identification of the individual, and thus there was no  
10 chance a false name could have affected any action by the agency.

11 Two circuits have held that the materiality requirement can be satisfied even when the  
12 government employee already knew the answers to the questions that produced false responses  
13 from the defendant. In *United States v. Goldfine*, the Ninth Circuit stated:

14 [W]e believe that the conduct Congress intended to prevent by § 1001 was the willful  
15 submission to federal agencies of false statements calculated to induce agency  
16 reliance or action, irrespective of whether actual favorable agency action was, for  
17 other reasons, impossible. We think the test is the intrinsic capabilities of the false  
18 statement itself, rather than the possibility of the actual attainment of its end as  
19 measured by collateral circumstances.

20 *United States v. Goldfine*, 538 F.2d 815, 820–21 (9th Cir.1976) (quoting *United States v.*  
21 *Quirk*, 167 F.Supp. 462, 464 (E.D.Pa.1958), aff’d, 266 F.2d 26 (3d Cir.1959)). Accord *United*  
22 *States v. Pereira*, 463 F.Supp. 481, 486–87 (E.D.N.Y.1978) (dictum ). In *Goldfine*,  
23 compliance investigators of the Drug Enforcement Administration already knew the defendant,  
24 who was a pharmacist, had made out-of-state purchases. The Ninth Circuit held that the  
25 registered pharmacist's statement to the effect that he had not made out-of-state purchases  
26 when he had in fact made such purchases was material to the investigation even though the  
27 investigators already knew that the pharmacist had made such purchases.

28 In *United States v. Whitaker*, 848 F.2d 914, 916 (8th Cir.1988), the Eighth Circuit held that  
the knowledge of the government employee at the time the defendant made the false  
statements is irrelevant to materiality. In that case, the FDIC examiner's knowledge was from

1 other sources. The Eighth Circuit cited *Goldfine* in support of the proposition that “a false  
2 statement can be material even if the agent to whom it is made knows that it is false.”  
3 *Whitaker*, 848 F.2d at 916.

4 Further, as noted by the United States Supreme Court in *Brogan v. United States*, 522 U.S.  
5 398, 402 (1998):

6 Certainly the investigation of wrongdoing is a proper governmental function; and  
7 since it is the very purpose of an investigation to uncover the truth, any falsehood  
8 relating to the subject of the investigation perverts that function. It could be argued,  
9 perhaps, that a disbelieved falsehood does not pervert an investigation. But making  
10 the existence of this crime turn upon the credulousness of the federal investigator (or  
11 the persuasiveness of the liar) would be exceedingly strange; such a defense to the  
12 analogous crime of perjury is certainly unheard of.

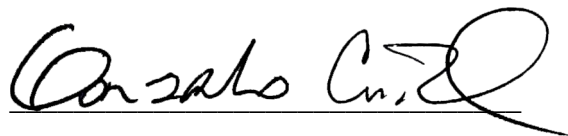
13 In this case, Agent McCormick did not know that Torres-Gonzalez had provided a false  
14 name at the moment that it was given. It was not until the Defendant’s fingerprints were run  
15 that it was determined that Torres-Gonzalez had made a false statement, i.e. provided a false  
16 name. Under *Brogan*, the false statement certainly perverted the investigative function of  
17 Agent McCormick. Also, under *Goldfine*, Defendant’s false statement was intrinsically  
18 capable of influencing the activities of Agent McCormick and was thus material.

#### 19 **IV. CONCLUSION**

20 The Court concludes that sufficient evidence supports the jury’s verdict and the  
21 conclusion that Defendant’s false statement was material under 18 U.S.C. § 1001. The Court  
22 DENIES Defendant’s motion for new trial.

23 **IT IS SO ORDERED.**

24 DATED: August 21, 2013



25 HONORABLE GONZALO P. CURIEL